

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.7955 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

ASHAPURI TIMBER MART

Versus

DY COLELCTOR STAMP DUTY VALUATION ORGANISATION

Appearance:

MR MUKESH R SHAH for Petitioner

MR HM BHAGAT for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/04/98

ORAL JUDGEMENT :

Rule.

1. Shri P.S. Patel, learned advocate for Shri H.M. Bhagat, waives service of rule for the respondents. On the facts and in the circumstances of the case, the petition is taken up for final disposal today.

2. This petition challenges the order dated 28.2.1997 passed by Deputy Collector, Stamp Duty Valuation, Sabarkantha District, Himatnagar, under sec.32A of the Bombay Stamp Act, 1958 ("the Act" for brevity) fixing the amount of the stamp duty at Rs.3,06,920/-, less Rs.5,400/- already affixed by the petitioner and also imposing a fine of Rs.250/-.

3. The facts leading to the present petition, as averred by the petitioner, are as under :

The petitioner purchased a land admeasuring 3541 sq. mtrs. under survey no.434 - Block No.539 of village Salal, Taluka Prantij, District Sabarkantha. The consideration mentioned in the document was Rs.45,000/-. The sale deed was presented for registration before the Sub Registrar, Prantij on 18.5.1992. Thereafter the petitioner was served with a show cause notice dated 31.12.1993 by the Deputy Collector, Stamp Duty Valuation, Sabarkantha - respondent no.1, exercising power under sec.32A of the Bombay Stamp Act. By the said show cause notice the petitioner was called upon to show cause as to why the petitioner should not be required to pay stamp duty on the basis that market price of the land was Rs.25,57,630/- instead Rs.45,000/- as mentioned in the document. The petitioner, therefore, was called upon to show cause why the petitioner should not be required to affix stamp of Rs.3,06,920/-.

In his reply to the show cause notice the petitioner denied that the market value of the land was as per the assessment indicated in the show cause notice and contended that the Collector, Sabarkantha had passed an order in respect of the adjoining land bearing survey no.538 for granting NA permission and at that time market price of the said land was fixed at Rs.20/- per sq. mtr. whereas the rate as per assessment in the show cause notice was Rs.700/- per sq. mtr., which was highly excessive and arbitrary. Respondent no.1 thereafter passed the impugned order dated 28.2.1997 assessing the market price of the land at Rs.25,57,630/- and directed the petitioner to make payment of Rs.3,01,520/- after giving credit for stamp duty of Rs.4500/- already paid by the petitioner earlier, and also penalty of Rs.250/-. It is the aforesaid order which is under challenge in the present petition.

4. In response to the notice, the respondents have appeared through their counsel and have contended that an equally efficacious and alternative remedy is available to the petitioner as the petitioner can prefer appeal

before the Chief Controlling Revenue Authority.

5. The learned counsel for the petitioner, however, has submitted that in the document the consideration for which the land in question is sold is Rs.10/- per sq. mtr. and for adjoining land the Collector had assessed value at Rs.20/- per sq. mtr, while granting NA permission, but respondent no.1 has assessed the market value of the land in question at Rs.700/- per sq. mtr., without bringing to the notice of the petitioner the material on the basis of which such arbitrary and astronomical rate is fixed and without giving the petitioner an opportunity of meeting with the same. It is submitted that respondent no.1 could not have assessed the value of the land at such an astronomical figure without relying on concrete evidence of sale instances of comparable lands in the nearby vicinity during the relevant period. However, no such material is referred to in the impugned order. There has, therefore, been a clear breach of principles of natural justice.

6. On the facts and in the circumstances of the case and particularly in view of the fact that respondent no.1 has assessed the market value of the land in question at Rs.700/- per sq. mtr. in May 1992 as against the value of land assessed at Rs.20/- per sq. mtr. by the Collector for the nearby land in August 1989 and also in view of the fact that respondent no.1 has not given the petitioner an opportunity of meeting with any concrete material to arrive at such an assessment, it would be just and proper to set aside the order and remand the matter to respondent no.1 with a direction to invite the petitioner's attention to the material on the basis of which respondent no.1 has assessed the value of the land and to give the petitioner an opportunity of meeting with the same.

7. The petition is accordingly allowed and the impugned order dated 28.2.1997 is set aside and the matter is remanded to respondent no.1 with a direction to invite the petitioner's attention to the material on the basis of which respondent no.1 has assessed the value of the land and to give the petitioner an opportunity of meeting with the same.

8. It is clarified that this Court has not expressed any opinion on merits. The impugned order is set aside and the matter is remanded to respondent no.1 only on the ground that there was a breach of principles of natural justice.

9. Rule is made absolute to the aforesaid extent.

There shall be no order as to costs.

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